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Illinois Independent Telephone Association)	
)	
Petition for initiation of an investigation of the)	
necessity of and the establishment of a)	Docket No. 00-0233
Universal Service Support fund in)	
accordance with Section 13-301(d) of)	
The Public Utilities Act.)	Cons.
 Illinois Commerce Commission)	
On Its Own Motion)	
)	Docket No. 00-0335
Investigation into the necessity of and,)	
if appropriate, the establishment of an universal)	
support fund pursuant to Section 13-301(d))	
of the Public Utilities Act.)	

CHIEF CLERK'S OFFICE

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ILLINOIS
COMMERCE COMMISSION

RESPONSE TO MOTION TO STRIKE

NOW COME Grafton Telephone Company, Gridley Telephone Company, Harrisonville Telephone Company and Home Telephone Company (referred to collectively hereafter as the "Companies") by and through their attorney, Troy A. Fodor, and hereby respond to the Joint Motion to Strike filed herein by AT&T, Ameritech, Verizon and WorldCom with respect to the embedded cost evidence in the pre-filed rebuttal testimony of the Companies, as follows:

1. The pre-filed Rebuttal Testimony of the Companies' witnesses G. Kraut, M. Petrouske and L. Whitcher is **appropriate "rebuttal"** to the positions taken by the ICC Staff and AT&T pursuant to which each of the companies would lose **100%** of their existing Illinois High Cost Fund and DEM Weighting Fund support. Under the ICC Staff and AT&T's HAI proposals, the Companies would each qualify for **zero** IUSF support¹, despite a demonstrated need based on

¹ This result would be final at the end of any approved "phase in" period. It should be noted that although the ICC Staff has suggested a 5 year "phase in," other parties have suggested a shorter "phase in" or the immediate realization of these onerous results.

the rate of return analysis in the Companies' Direct Testimony.² The Companies' Rebuttal Testimony responds to and provides strong factual and policy evidence to rebut the HAI proposals of the ICC Staff and AT&T, and therefore is **appropriate rebuttal evidence**. This fact is clearly shown on page 6 of Mr. Whitcher's rebuttal testimony on behalf of Harrisonville where he responds to a question about his recommendation to the Commission as follows:

"Since Harrisonville Telephone Company has met the statutory requirement based on this embedded economic cost analysis, the company should receive state Universal Service Funding based either on its embedded cost study or the company-specific Rate of Return showing, and, not be phased down to the Staff's or AT&T's proposed HAI level of support."³

Since the Companies' rebuttal testimony represents appropriate rebuttal to the extreme positions of the ICC Staff and AT&T whereby the Companies would lose all state funding, the Companies have fully complied with the schedule in these consolidated dockets. The Joint Movant's argument to the contrary would have the absurd result of a schedule being put in place on March 22, 2001 and the Companies being required to intervene in the proceeding and develop and file their embedded economic cost evidence **1 day later** on March 23, 2001. Since the schedule clearly provided for rebuttal by small companies on June 12, 2001, such was not required, and the Companies have not contravened the schedule. The Companies' rebuttal testimony was **timely** filed and served in full accord with the schedule for small telephone company rebuttal testimony on June

² Despite the need shown by the Companies' rate of return evidence, under the HAI proposals of AT&T and the ICC Staff, Home Telephone Company would lose approximately \$600,000 of existing funding, and would have to raise rates for basic local service to approximately \$78 per month in order to recoup this loss from their local exchange subscribers.

³ The rebuttal testimony of Mr. Petrouske on behalf of Grafton, Gridley and Home Telephone Companies contains the same answer. The rebuttal testimony of Mr. Kraut on behalf of Grafton, Home and Harrisonville Telephone Companies provides the factual basis for the policy arguments by Mr. Petrouske and Mr. Whitcher.

12, 2001.

2. The Companies' rebuttal testimony was **timely** filed in light of the recent **FCC finding** that "it is **not possible** to determine the forward-looking costs of rural carriers at this time." The FCC's Order, which is referenced in the Companies' rebuttal testimony, was not released until May 23, 2001.

3. The rebuttal testimony was **timely** filed at the first possible opportunity. Prior to May 31, 2001 for Grafton, Gridley and Harrisonville (May 11, 2001 for Home), there was no need for the factual evidence about the Companies' embedded costs with respect to the supported services, because the then current proposal was to use the rate of return analysis filed by the small companies to size and allocate the fund. On May 11, 2001, the ICC Staff filed its direct testimony wherein it proposed to allocate funding for individual small companies based on the lesser of Staff's HAI results for the company or the company's rate of return deficiency. On or about that same day, AT&T filed its direct testimony with its HAI proposal. Under Staff's "lesser of the two" approach and under AT&T's HAI proposal, Home Telephone Company would qualify for **no** IUSF support. On May 31, 2001, the ICC Staff and also AT&T presented adjustments to their HAI results which would for the first time proposed to **deprive** Grafton, Gridley and Harrisonville of **all** state support.

4. The Companies' rebuttal testimony does not introduce a new substantive position by the Companies, and it is in full accord with the positions in their direct testimony. The Companies presented rate of return evidence in their direct testimony based on the Companies' embedded costs. IITA, on behalf of all small companies, presented evidence supporting use of the small companies' rate of return evidence as the appropriate means to size and allocate the fund. In addition, Home Telephone Company presented evidence in its direct testimony supporting use of the small

companies' rate of return evidence as the appropriate means to size and allocate the fund.

5. The additional embedded cost evidence in the form of embedded economic cost studies for each Company is nothing more than support for the Companies' earlier positions that the rate of return deficiency should be used to size and allocate the fund. The Companies' have not changed their positions that the rate of return evidence is the appropriate basis for sizing and allocating the fund.⁴ In light of the lack of consistency between the HAI results in the record⁵ and the clear finding in the FCC's recent Order, the Companies have presented an alternate way to view their embedded costs, in addition to the rate of return evidence. The Companies' embedded economic cost studies were performed to appropriately separate out the costs associated with non-supported services, so the Commission could gauge the reasonableness of the rate of return evidence.

6. The position of certain of the Joint Movants, specifically Ameritech, Verizon and WorldCom, is confusing to say the least. These Movants have not opposed the use of the companies' rate of return deficiencies to determine the size and allocation of the fund, rather than HAI. Ameritech has specifically stated in its rebuttal testimony that HAI should not be used.

7. The Joint Movants claim to a violation of due process is equally confusing. Nothing could be further from the truth. In fact, if anything, the denial to the Companies of the right to

⁴ If the Joint Movants are concerned about the potential increase to the size of the fund which would result if the amount of need shown by Harrisonville's embedded cost study were used to determine its funding, Harrisonville is not seeking to increase its funding beyond the amount of its rate of return deficiency. Likewise, Grafton, Gridley and Home Telephone Companies are not seeking to increase their funding beyond the amount of their rate of return deficiency.

⁵ The difference between the various HAI results in the record show a swing of approximately \$5,000,000 for Harrisonville.

present their embedded economic cost evidence would be the violation of the principles of fundamental fairness and due process. This is especially true when it is noted that these 4 Companies collectively stand to lose approximately \$2.3-2.4 million and considering that the FCC has just found that the forward looking cost models do not yet work for rural carriers.

If what the Joint Movants are really saying is that they need more time to prepare to cross examine the Companies' witnesses on the embedded economic cost studies, the Companies do not object to scheduling a day next week or the week after for such purpose.

8. The position that the Companies are bound by some agreement between the Joint Movants and IITA cannot seriously be considered. The Joint Movant's are not un-sophisticated and must have known that the IITA was not the same legal and corporate entity as the individual small companies. The Companies certainly never agreed (and cannot reasonably be believed to have agreed) to allow IITA to make an agreement under which they would **lose all state funding**. The argument of the Joint Movants is contrary to clear caselaw. Almost the exact same issue was raised in a case handled by this counsel involving a state-wide association and a regulated utility. In Peru v. Illinois Power, 258 Ill.App.3d 309, 630 N.E.2d 454 (1994), a contract made by the Illinois Municipal Electric Agency (an entity with approximately 40 members who are municipal electric providers) and Illinois Power Company was found not to bind the City of Peru to the contract's arbitration provisions even though the City of Peru (a member of IMEA) was a 3rd party beneficiary of the contract. Just like in the Peru case, even though the individual small companies are intended beneficiaries of the efforts of the IITA, the IITA cannot bind them to any agreement without their specific participation in the agreement.

Wherefore, Grafton Telephone Company, Gridley Telephone Company, Harrisonville Telephone Company and Home Telephone Company respectfully request that the Joint Motion to Strike be denied.

Respectfully submitted,

Grafton Telephone Company,
Gridley Telephone Company,
Harrisonville Telephone Company,
and Home Telephone Company,

By: Troy A. Fodor
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CERTIFICATE OF SERVICE

00-0233/00-0335

The undersigned, TROY A. FODOR, hereby certifies that on the 18th day of June, 2001, he served a copy of the foregoing instrument by personally delivering a copy thereof and/or mailing a copy thereof by electronic mail and/or United States Mail, postage prepaid, at Springfield, Illinois, to the individuals named on the attached Service List in envelopes plainly addressed to each of them.

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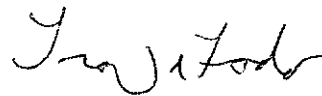
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